

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

AUG 22 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JESUS MANUEL OCHOA,

Defendant - Appellant.

No. 05-10607

D.C. No. CR-04-00609-JMR

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Arizona
John M. Roll, District Judge, Presiding

Submitted August 18, 2006^{**}
San Francisco, California

Before: HAWKINS and THOMAS, Circuit Judges, and MILLER^{***}, District
Judge.

^{*} This disposition is not appropriate for publication and may not be
cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

^{***} The Honorable Jeffrey T. Miller, United States District Judge for the
Southern District of California, sitting by designation.

Jesus Manuel Ochoa (“Ochoa”) appeals his conviction and sentence for possession of marijuana with intent to distribute, assault on an Immigration and Customs Enforcement agent during a high speed chase near the Mexican border, and resulting damage to the agent’s vehicle. We affirm.

I

The district court did not violate Ochoa’s due process rights by declining to suppress a government witness’s identification, which concerned only the earlier incident, for which charges have been dismissed. The record does not disclose any reason that the admission of the evidence in this case tainted Ochoa’s conviction for the incident during which he was arrested, particularly given that the jury failed to accept that evidence for the earlier charges to which it was relevant. The agent’s in-court identification of Ochoa bore sufficient signs of reliability to permit admission of the testimony which, in turn, provided a sufficient basis when combined with other evidence for Counts one through four to be submitted to the jury. *United States v. Valenzuela*, 722 F.2d 1431, 1432 (9th Cir. 1983).

II

The sentence imposed by the district court was reasonable. *See United States v. Booker*, 543 U.S. 220, 264 (2005). The court did not err in considering the earlier events, of which Ochoa was not convicted, in its sentencing decision,

based on its reasonable determination that a preponderance of the evidence showed that Ochoa had been involved. *See United States v. Watts*, 519 U.S. 148 (1997).

After a careful review of the record, we conclude that the district court did not apply any improper presumption in favor of the Guidelines; rather, the sentence imposed was reasonably based on an independent review of the record and the applicable sentencing factors, particularly the seriousness of the offense, as well as the Guidelines' advice.

AFFIRMED.